

STATE OF MICHIGAN
COURT OF APPEALS

TRI-COUNTY PETROLEUM, INC.,

Plaintiff-Appellant,

v

ABN AMRO MORTGAGE GROUP, INC.,

Defendant-Appellee,

and

AHMAD H. LAILA,

Defendant.

UNPUBLISHED

November 22, 2005

No. 262279

Wayne Circuit Court

LC No. 04-424931-CK

Before: Davis, P.J., and Fitzgerald and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the order denying its motion for summary disposition and granting summary disposition in favor of defendant, ABN Amro Mortgage Group, Inc. (ABN), in this action to quiet title. We affirm.

This Court reviews de novo the grant or denial of summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Williams v Medukas*, 266 Mich App 505, 507; 702 NW2d 667 (2005), citing *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency for a claim and must be supported by affidavits, pleadings, depositions, admissions, or other evidence submitted by the parties. *Id.* The trial court must consider the evidence in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(G)(4); MCR 2.116(I)(1) and (2); *Williams, supra* at 507, quoting *Maiden, supra* at 120.

Plaintiff argues on appeal that its notice of lis pendens has priority over ABN's earlier acquired, but later-recorded, mortgage. We disagree. The prioritization of encumbrances on property in Michigan is governed by statute. To qualify for the protections of Michigan's recording acts, MCL 565.1 *et seq.*, a person must have a conveyance that is first recorded and be a bona fide purchaser. MCL 565.29.¹ A notice of lis pendens is "[a] notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome." Black's Law Dictionary (7th ed); see also *Backowski v Solecki*, 112 Mich App 401, 412; 316 NW2d 434 (1982).

In *Hammond v Paxton*, 58 Mich 393, 397; 25 NW 321 (1885), the Court held that an unrecorded mortgage had priority over a notice of lis pendens that was recorded after the mortgage was taken:

The notice [of lis pendens] filed at that time only affected those who should obtain interests in the property after the filing of the notice during the pendency of the suit. Hammond's interest was acquired by the execution and delivery of the mortgage three days previous to that time, and consequently he was unaffected by this notice of lis pendens. [*Id.*]

Thus, in Michigan, a notice of lis pendens operates prospectively only, as a warning to future purchasers that they take the property subject to the outcome of pending litigation.

Here, ABN took the mortgage on the property on March 20, 2001, and acquired an interest in the property. Plaintiff filed suit against Hassan Leila² on May 13, 2002, and recorded the notice of lis pendens on August 20, 2002. ABN therefore acquired its interest in the property more than a year before the suit was filed and the lis pendens recorded, not during the pendency of litigation. Because a notice of lis pendens can only operate prospectively to warn future purchasers that they take subject to the pending litigation, ABN's earlier-acquired interest has priority over any interest that plaintiff may acquire as a result of the lis pendens, irrespective of when ABN's interest was recorded. See *Hammond, supra* at 397.

Furthermore, plaintiff was not a good-faith purchaser within the meaning of Michigan's recording statutes. "A good faith purchaser is one who purchases without notice of a defect in the vendor's title." *Michigan National Bank v Morren*, 194 Mich App 407, 410; 487 NW2d 784

¹ MCL 565.29 provides, in pertinent part:

Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded.

² Hassan Leila purchased the property on August 26, 1997. On March 20, 2001, Hassan sold the property to defendant Ahmad Laila. ABN loaned Ahmad \$208,000 and received a mortgage on the property. The sale and mortgage were not recorded at that time.

(1992). A purchaser is deemed to have examined the record and to have notice of the contents of all instruments in the chain of title and of the contents of instruments referred to in an instrument in the chain of title. MCL 600.2701; see *Boraks v Siegel*, 366 Mich 308, 311-312; 115 NW2d 126 (1962).

ABN recorded its claim of interest on June 4, 2003, giving notice that ABN obtained a mortgage on the property from defendant Ahmad Laila on March 20, 2001. Plaintiff purchased the property at a sheriff's sale on July 10, 2003. Thus, when plaintiff purchased the property, it was on at least constructive notice regarding ABN's interest and was not a good-faith purchaser. MCL 600.2701; see *Boraks, supra* at 311-312. The trial court properly denied plaintiff's motion for summary disposition and granted ABN's motion for summary disposition.

Affirmed.

/s/ Alton T. Davis
/s/ E. Thomas Fitzgerald
/s/ Jessica R. Cooper